



Report to Planning & Zoning Commission

Clay County, Missouri

Case Number **Sept. 11-108V**

Case Type **Vacation**

Project Name **Vacation of Utility Easements ("U.E.") – Portions
of Lots 1 thru 5 of Wharton Estates**

Applicants Benton C. & Michelle Killingsworth
25308 N. Clark
Lawson, MO 64062

Owners SAME

Request **Vacation** of a U.E. on Portions of Lots 1 thru 5 of Wharton
Estates

Application Submittal 2011-08-02

Public Notice Published 2011-08-18

Neighbor Letters Sent 2011-08-19

Report Date 2011-08-31

Public Hearing Opened 2011-09-06

REPORT AUTHOR(S) Matt Tapp, Director
Debbie Viviano, Planner

Recommendation **APPROVAL** with conditions



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General Information

Site Location: Portions of Lots 1 thru 5, Wharton Estates
NW corner of NE 174th St and Salem Rd.

Section 13 | Township 53 | Range 30

Site Size: See below legal description & attachments

Existing Landuse & Zoning: Agricultural (AG)

Zoning/Platting History:

Rezoning – 07/25/2005, Res. #2005-293 (AG to R-1A); Preliminary Plat – 07/25/2005, Res. #2005-294, “Wharton Addition 2005”; Final Plat – Wharton Estates, 11/28/2005, Res. #2005-511, Recorded 2/14/2006. Rezoning (R-1A to AG)/Prelim. Plat – 07/22/2011, Res. #2011-237.

Surrounding Landuse & Zoning:

North – Agriculturally zoned land (AG), City of Lawson [approx. 1 mile]
East – Agriculturally zoned land (AG), Snedland (R-1A/AG), 4-D Acres (R-1)
South – Homestead Ranches & Northridge Heights (R-1),
City of Excelsior Springs [approx. 2 miles]
West – Agriculturally zoned land, Roberts Subdivision (R-1), Mandl Acres (R-1A),
Watkins Mill State Park [approx. 1 mile]

Current Conditions:

See Attachments “B” and “C” at the end of this report.



Report to Planning & Zoning Commission

Clay County, Missouri

Assessment

Benton ("Ben") and Michelle ("Shelly") Killingsworth seek to vacate, or remove, three (3) internal Utility Easements (henceforth known as "U.E.") on portions of Lots 1 thru 5 of Wharton Estates, legally described as follows:

That portion of Lots 1 & 2, Wharton Estates, Clay County, Missouri, being described as follows: Beginning at a Point which is S00°35'26"W, 15.00 feet from the NE Corner of said Lot 1; thence S89°53'05"E, 7.50 feet; thence S00°35'26"W, 1217.52 feet; thence S89°55'43"W, 15.00 feet; thence N00°35'26"E, 1217.52 feet; thence S89°53'05"E, 7.50 feet to the Point of Beginning.

AND

That portion of Lots 2 & 3, Wharton Estates, Clay County, Missouri, being described as follows: Beginning at a Point which is S00°35'43"W, 15.00 feet from the NE Corner of said Lot 2; thence N89°45'43"E, 7.50 feet; thence S00°35'43"W, 1215.40 feet; thence S89°55'43"W, 15.00 feet; thence N00°35'43"E, 1215.40 feet; thence N89°45'43"E, 7.50 feet to the Point of Beginning.

AND

That portion of Lots 3, 4 & 5, Wharton Estates, Clay County, Missouri, being described as follows: Beginning at a Point which is S00°33'13"W, 15.00 feet from the NE Corner of said Lot 3; thence N89°45'43"E, 7.50 feet; thence S00°33'13"W, 1217.30 feet; thence S89°55'43"W, 15.00 feet; thence N00°33'13"E, 1217.30 feet; thence N89°45'43"E, 7.50 feet to the Point of Beginning.

Mr. & Mrs. Killingsworth are seeking to vacate the existing U.E. as part of a connected replatting of their property, Lots 1 thru 5 of Wharton Estates being renamed to Killingsworth Hideaway (see case number Sept. 11-109F). New internal U.E. follows the revised property lines which will be dedicated as a result of the new final plat, Killingsworth Hideaway.

2008 Comprehensive Plan Considerations

Not Applicable (N/A).

Character of the General Neighborhood

The subject property lies approximately one (1) mile east of the Watkins Mill State Park. Homestead Ranches (R-1) and Northridge Heights (R-1) subdivisions are to the south. Williams Creek runs along the east and an unnamed tributary along the west traverse the property and then conjoin in approximately the middle of the proposed Lot 2A, thus containing a good amount of designated FEMA floodplain.

(See "Attachment B – Existing Conditions Map").

Code Considerations

Chapter 3 of the 2003 Clay County Land Development Code ("LDC") last amended March 8, 2010 sets out the required review and approval procedures for vacations of any street, avenue, road, alley, public easement, ingress/egress, utility easement, public square or common area included as part of a recorded plat, in accordance with the Missouri Revised Statutes ("RSMo") Chapter 71.270.



Report to Planning & Zoning Commission

Clay County, Missouri

The applicant for a vacation must meet the approval criteria as noted in Section 151-3.12 (F) of the LDC:

F. Approval Criteria

A Vacation application shall be approved by the County Commission if they determine that all of following approval criteria have been met:

1. Due and legal notice has been provided as required by this section;
2. No private rights will be injured or endangered by the Vacation;
3. The public will suffer no loss or inconvenience from the Vacation; and
4. In justice to the applicant, the Vacation should be approved.

The requested U.E. vacation for portions of Lots 1 thru 5, Wharton Estates appears to substantially comply with the LDC. The vacation application was properly noticed in the Kearney Courier on August 18, 2010, and was posted in five (5) public places in the county prior to September 1, 2011 for the County Commission meeting of September 19th, 2011. Adjacent property owners within the statutory law mandated 1,000 foot distance were notified by means of a letter dated August 18, 2010.

Outside Agency Review

The Clay County Planning & Zoning Department sent out notices of the vacation request to all utility providers and other agencies for their comments and possible objections to the vacation. Replies with no objection to the request have been received from water (*PWSD#1 of Ray County*), Sprint (*Embarq Corp.*), electrical (*P.C.E.C., KCP&L*), gas (*Missouri Gas Energy*) agencies and Enterprise Products Operating, LLC (*Mid-America Pipeline Company*).

Findings

None at this time.

Recommendations

Based upon no stated objection by any utility company or neighbor, that the original U.E. would be adequately replaced by the establishment of new U.E. with the associated final replat (*Case #: Sept. 11-109F*), along with general compliance to the LDC, staff recommends **approval** of this vacation request with the following conditions as shown on Exhibit A:

Exhibit A

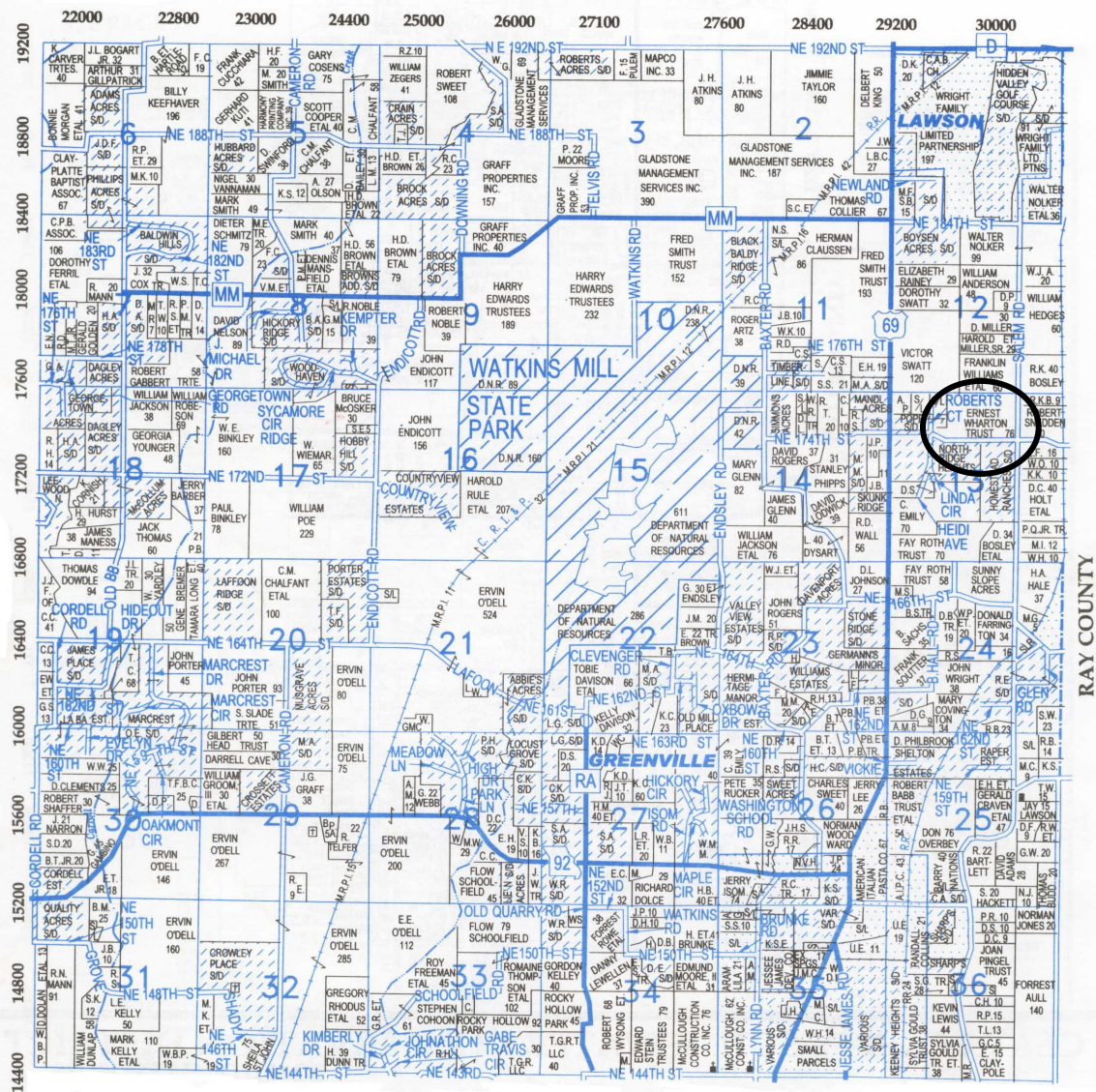
1. The **Resolution for Vacation** (if approved by the County Commission) be recorded simultaneously with the final plat of Killingsworth Hideaway, a Replat of Wharton Estates (*Case #: Sept. 11-109F*) with the above described utility easements shown as vacated.

Attachments

Sept. 11-108V – U.E. Vacation on Lots 1 thru 5 of Wharton Estates

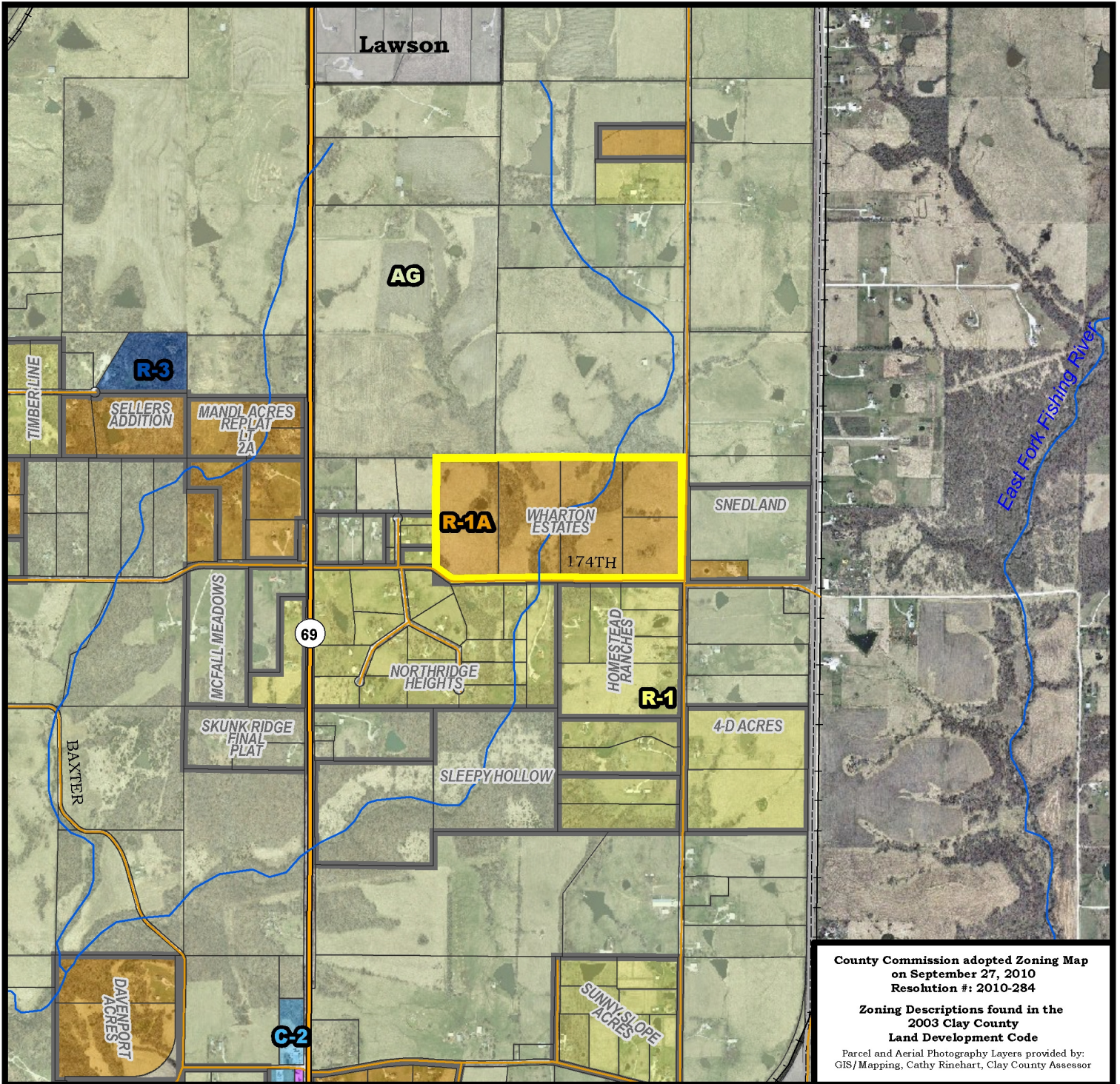
Attachment A – Vicinity Map

TOWNSHIP 53N • RANGE 30W



Sept 11-108V - Wharton Estates Vacation

Attachment B - Existing Conditions Map



County Commission adopted Zoning Map
on September 27, 2010
Resolution #: 2010-284

Zoning Descriptions found in the
2003 Clay County
Land Development Code

Parcel and Aerial Photography Layers provided by:
GIS/Mapping, Cathy Rinehart, Clay County Assessor

Planning & Zoning Department



1 inch = 1,500 feet
1 inch = 0.28 miles

LEGEND

Property

parcel

~~~~~ Streams (EPA)

——— Railroads

#### Roads CLASS

——— Interstates

——— State Highways

——— Local Roads

——— Highway Ramps



Subdivisions



County Boundaries



2011 City Limits



Parks

#### Zoning Districts

■ AG

■ R-1

■ R-1A

■ R-1B

■ R-3

■ C-1

■ C-2

■ C-3

■ I-1

■ I-2

■ OP

■ R-1A/CD

■ AG/PUD

■ R-1B/PUD

■ I-1/PUD

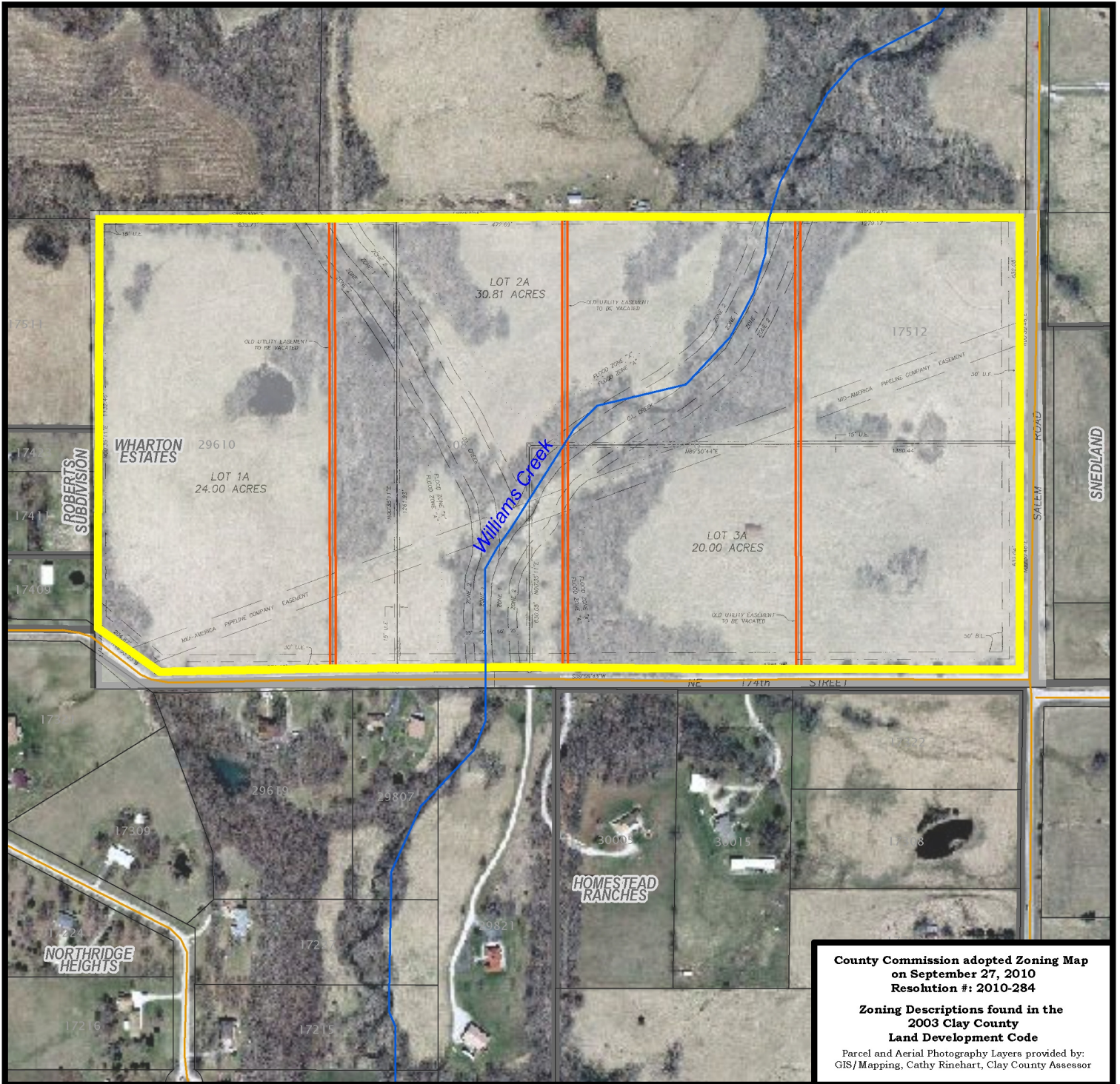
■ R-1A/I-1/PUD

■ R-1B/C-2/PUD



# Sept 11-108V - Wharton Estates Vacation

## Attachment C - Site Plan Map



County Commission adopted Zoning Map  
on September 27, 2010  
Resolution #: 2010-284  
Zoning Descriptions found in the  
2003 Clay County  
Land Development Code

Parcel and Aerial Photography Layers provided by:  
GIS/Mapping, Cathy Rinehart, Clay County Assessor

